

On January 5, 2003 appellant, then a 66-year-old former forester, filed an occupational disease claim alleging that he sustained chronic fatigue and prostate cancer due to factors of his federal employment. Appellant indicated that in November 2001 he realized that his condition was caused or aggravated by his employment. In an accompanying statement, appellant noted

that he was part of a helicopter spray program in the summer of 1964. He related that while participating in the helicopter spray program a “hose malfunctioned and I was soaked with 24-D [and] 245-T and diesel over [three-quarters] of my lower body (chest to thighs).” Appellant stated that he had chronic fatigue “since the herbicide incident” and further noted that he had frequent herbicide exposure as a helicopter manager. He related that he was diagnosed with prostate cancer in November 2001 and “recently became aware that Vietnam Vet[erans] who were sprayed or worked with [A]gent [O]range (245-T, 24-D) have been diagnosed with a high degree of prostate cancer.” Appellant stated that he was “submitting a claim for my health problems of prostate cancer and a chronic fatigue problem that developed after being doused with the herbicide.”

In a statement accompanying appellant’s claim, an official with the employing establishment verified that appellant worked as a forester from July 9, 1962 to June 18, 1966 but noted that there was “no documentation on file that would support [appellant’s] alleged claim.”

With his claim, appellant submitted a statement dated December 7, 2002 from Richard O. Thomas, who related that he worked with appellant around the summer of 1964. Mr. Thomas stated that while spraying bush with spray bombs “a hose broke and sprayed chemical all over the place. It seemed minor at the time so no report was made.”

Appellant further submitted fact sheets from the Department of Veterans Affairs regarding Agent Orange.

In response to the Office’s request for additional information, appellant submitted a statement dated April 29, 2003. He related that he began working for the employing establishment on July 8, 1962 and was last exposed to the conditions to which he attributed his condition as a helicopter manager in 1982. Appellant related that he was exposed to the herbicides 24-D, 245-T and Roundup.

A physician’s assistance, Stephen Haugue, noted in a report dated November 19, 2002 that appellant had participated in an Agent Orange examination conducted by the Department of Veterans Affairs. He stated that the examination revealed that appellant had prostate cancer.

The record contains unsigned clinic notes dated January to September 1995 from Dr. David R. Rushlow, who is Board-certified in family practice. In a clinic note dated July 20, 1995, he diagnosed a “[c]hronic problem with episodic fatigue of questionable etiology.” In a clinic note dated September 1, 1995, Dr. Rushlow noted that appellant complained of fatigue for 30 years and that he questioned whether fertilizer exposure could cause his symptoms. He stated, “I did not feel his symptoms were due to the previous exposure to the fertilizer several years ago.”

In a statement dated May 19, 2003, an official with the employing establishment indicated that she was unaware of “Agent Orange or any other known carcinogen used by the [employing establishment] during the period of time” that appellant worked.¹

¹ The record indicates that appellant retired on disability in the mid-1980s.

By decision dated September 25, 2003, the Office denied appellant's claim on the grounds that the medical evidence did "not demonstrate that the claimed medical condition is related to the established work-related event(s)...."

Appellant requested an oral hearing on October 20, 2003. At the hearing, held on March 29, 2004, appellant described the 1964 incident in which he was soaked with Agent Orange and diesel fuel. He related that subsequent to that time he experienced chronic fatigue but was unaware of the cause of his fatigue. Appellant stated that he later learned about the problems of Vietnam Veterans due to exposure to Agent Orange. He indicated that after his prostate surgery, he researched the effects of Agent Orange exposure and realized that it caused his chronic fatigue and prostate cancer.

Appellant submitted newspaper articles about Agent Orange and an operative report of his prostatectomy on December 18, 2001. He further submitted an Agent Orange examination by a physician dated November 15, 2002.² The physician noted appellant's exposure to Agent Orange after being sprayed during the course of his employment. He diagnosed Agent Orange exposure, a refraction disorder, allergic rhinitis, allergy, dermatitis and malignancy of the prostate.

In an unsigned report dated November 28, 2001, Dr. Mark J. Chelsky, a Board-certified urologist, diagnosed a malignant neoplasm of the prostate and discussed treatment.

In an unsigned office note dated December 30, 2002, Dr. Frank M. Chybowski, a Board-certified urologist, related that appellant had questions "regarding the association of [A]gent Orange and prostate cancer...." He diagnosed adenocarcinoma of the prostate with no current evidence of the disease.

In a decision dated June 15, 2004, a hearing representative affirmed the Office's September 25, 2003 decision. The hearing representative found that the medical evidence was insufficient to support a finding that appellant's chronic fatigue syndrome and prostate cancer were due to his federal employment.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act³ has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged; and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.⁴ These are the essential

² The name of the physician is not legible. The hearing representative found that it appeared to be Dr. Richard Thu.

³ 5 U.S.C. §§ 8101-8193.

⁴ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁵

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed;⁶ (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;⁷ and (3) medical evidence establishing the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁸

The medical evidence required to establish causal relationship generally is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence, which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors.⁹ The opinion of the physician must be based on a complete factual and medical background of the claimant,¹⁰ must be one of reasonable medical certainty¹¹ explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹²

ANALYSIS

In this case, appellant attributed his chronic fatigue and prostate cancer to exposure to herbicides during the course of his federal employment. In particular appellant noted that he was soaked with Agent Orange and diesel fuel in 1964 as a result of an equipment malfunction. The Office accepted the occurrence of the claimed employment factors. The issue, consequently, is whether the medical evidence establishes a causal relationship between the claimed conditions of chronic fatigue and prostate cancer and the identified employment factors.

⁵ See *Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999); *Elaine Pendleton*, *supra* note 4.

⁶ *Solomon Polen*, 51 ECAB 341 (2000).

⁷ *Marlon Vera*, 54 ECAB ____ (Docket No. 03-907, issued September 29, 2003); *Roger Williams*, 52 ECAB 468 (2001).

⁸ *Ernest St. Pierre*, 51 ECAB 623 (2000).

⁹ *Conrad Hightower*, 54 ECAB ____ (Docket No. 02-1568, issued September 9, 2003); *Leslie C. Moore*, 52 ECAB 132 (2000).

¹⁰ *Tomas Martinez*, 54 ECAB ____ (Docket No. 03-396, issued June 16, 2003); *Gary J. Watling*, 52 ECAB 278 (2001).

¹¹ *John W. Montoya*, 54 ECAB ____ (Docket No. 02-2249, issued January 3, 2003).

¹² *Judy C. Rogers*, 54 ECAB ____ (Docket No. 03-565, issued July 9, 2003).

Appellant submitted a November 19, 2002 report from a physician's assistant discussing his participating in an Agent Orange registry for the Department of Veterans Affairs and finding that he had prostate cancer. The reports of a physician's assistant, however, are entitled to no weight as a physician's assistant is not a "physician" as defined by section 8101(2) of the Act.¹³

Appellant further submitted unsigned chart notes from Dr. Rushlow dated January to September 1995, an unsigned November 28, 2001 report from Dr. Chelsky and an unsigned December 30, 2002 report from Dr. Chybowski. The Board has consistently held that unsigned medical reports are of no probative value.¹⁴

In a report dated November 15, 2002, a physician noted that he had conducted an Agent Orange examination on appellant. He discussed appellant's history of being sprayed by Agent Orange while working for the employing establishment. The physician diagnosed Agent Orange exposure, a refraction disorder, allergic rhinitis, allergy, dermatitis and malignancy of the prostate. He did not, however, address the cause of the diagnosed conditions or relate any condition to Agent Orange exposure. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹⁵

The Office advised appellant of the type of medical evidence required to establish his claim; however, he failed to submit such evidence. An award of compensation may not be based on surmise, conjecture, speculation or upon appellant's own belief that there is a causal relationship between his claimed condition and his employment.¹⁶ To establish causal relationship, appellant must submit a physician's report in which the physician reviews those factors of employment identified by appellant as causing his condition and, taking these factors into consideration as well as findings upon examination and appellant's medical history, explain how these employment factors caused or aggravated any diagnosed condition and present medical rationale in support of his or her opinion.¹⁷ Appellant failed to submit such evidence and therefore failed to discharge his burden of proof.

On appeal, appellant argues that the articles he submitted from medical publications and the Department of Veterans Affairs support that Agent Orange exposure caused his conditions. The Board has held, however, that newspaper clippings, medical texts and excerpts from publications are of no evidentiary value in establishing causal relationship between a claimed condition and appellant's federal employment as such materials are of general application and are not determinative of whether the specific condition claimed is related to particular employment factors or incidents.¹⁸ Moreover, the findings of other government agencies are not

¹³ *Allen C. Hundley*, 53 ECAB ____ (Docket No. 02-107, issued May 17, 2002).

¹⁴ *Merton J. Sills*, 39 ECAB 572 (1988).

¹⁵ *Willie M. Miller*, 53 ECAB ____ (Docket No. 02-328, issued July 25, 2002).

¹⁶ *Patricia J. Glenn*, 53 ECAB ____ (Docket No. 01-65, issued October 12, 2001).

¹⁷ *Robert Broome*, 55 ECAB ____ (Docket No. 04-93, issued February 23, 2004).

¹⁸ *Gloria J. McPherson*, 51 ECAB 441 (2000).

dispositive with regard to questions arising under the Act.¹⁹ Thus, this material is not probative on the issue in question.²⁰

CONCLUSION

The Board finds that appellant has not established that he has prostate cancer and chronic fatigue syndrome causally related to factors of his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated June 15, 2004 and September 25, 2003 are affirmed.

Issued: January 6, 2005
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

¹⁹ *Henry C. Garza*, 52 ECAB 205 (2001).

²⁰ On appeal, appellant also contends that he was unable to obtain representation because the attorneys had to be approved by the Office prior to representation and had to obtain approval from the Office prior to collecting a fee. The rules regarding representation of claimants are governed by regulation at 20 C.F.R. §§ 10.700-10.703. The Board's sole function regarding attorney's fees is to determine whether actions taken by the Office regarding attorney's fees constitutes an abuse of discretion. *Francesco C. Veneziani*, 48 ECAB 572 (1997).